

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

U.S. DISTRICT COURT
DISTRICT OF MARYLAND

FILED
2015 OCT -9 PM 12:09

UNITED STATES OF AMERICA, *

CLERK'S OFFICE
AT BALTIMORE
Criminal No. RDB-14-00048
BY DEPUTY

Petitioner,

v.

Civil Action No. RDB-15-856

LEONARD BENJAMIN, *

Respondent. *

* * * * *

MEMORANDUM ORDER

Leonard Benjamin (“Petitioner”) has filed this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 99). Petitioner’s sole claim for relief is that he instructed his attorney to file a notice of appeal, and that counsel failed to do so. An evidentiary hearing would typically be necessary to determine whether Petitioner unequivocally instructed his trial counsel to file a notice of appeal. *See United States v. Poindexter*, 492 F.3d 263, 267 (4th Cir. 2007). However, pursuant to the Government’s request (ECF No. 101), and in the interest of preventing the unnecessary time and expense that would be entailed in holding such a hearing to resolve this issue, this Court will enter an order granting Petitioner an extension under Fed. R. App. P. 4(b)(4) to file a notice of appeal. Without ruling on the merits of his substantive claim of ineffective assistance of counsel, this Court will therefore grant Petitioner’s § 2255 Motion to permit him to file the requested appeal.

Accordingly, it is, this 9th day of October 2015 HEREBY ORDERED that:

1. Leonard Benjamin is GRANTED an extension to file a notice of appeal for a period not to exceed 30 days from the entry of this judgment;
2. Benjamin's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 99) is GRANTED;
3. Copies of this Order and the accompanying Memorandum Opinion shall be sent to the Petitioner and Counsel of record; and
4. The Clerk of this Court shall CLOSE this case.

R.D. Bennett

Richard D. Bennett

United States District Judge